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CITY OF PORTSMOUTH *v.* LEE.

June 8, 1911.

[71 S. E. 630.]

1. Municipal Corporations (§ 755*)—Accident in Street—Care Required of Municipality.—A municipal corporation is not an insurer against accidents upon its streets and sidewalks; but it is bound only to use due care to see that its streets and sidewalks are reasonably safe to persons passing on them when exercising ordinary care, and it is only liable for injuries from defects where it has negligently failed to do that which it could be reasonably required to do in the particular case.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1587-1590; Dec. Dig. § 755.* 12 Va.-W. Va. Enc. Dig. 901.]

2. Municipal Corporations (§ 775*)—Negligence—Cleansing Sewer.—Where a sewer which was clogged was being cleansed by forcing water through it from a hose pipe, which was not only the usual way, but the only way it could properly be done, the city had the right to put the hose there for that purpose, and allow it to remain there as long as necessity required, using only such precaution against injury to persons using it as required under the circumstances.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. § 1630; Dec. Dig. § 775.* 12 Va.-W. Va. Enc. Dig. 901, 907.]

3. Municipal Corporations (§ 798*)—Defects in Streets—Warning to Travelers.—Where the city found it necessary to clean out a clogged sewer by allowing water to run all night through a fire hose from a hydrant into a catch-basin at a street corner, and the hose was laid in the gutter close to the curb, and a lighted lantern placed on the curb, and there was an arc light at the corner over the catch-basin, all the necessary precautions for the safety of travelers were taken, and it was not necessary to take extra precautions, such as stationing a watchman, to warn passers of the presence of the hose.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1657, 1658; Dec. Dig. § 798.* 12 Va.-W. Va. Enc. Dig. 901.]

4. Municipal Corporations (§ 755*)—Duty to Health and Welfare of Citizens.—It is as much the duty of a municipal corporation to take proper precautions for the health and welfare of its citizens as it is to keep its streets and all parts of them in reasonably safe condition for public travel.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1587-1590; Dec. Dig. § 755.* 10 Va.-W. Va. Enc. Dig. 209, 215.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

5. Municipal Corporations (§ 791*)—Defects in Streets—Notice to City of Defect.—Where it was necessary to run water all night through a fire hose into a catch-basin, and the hose was left in the gutter close to the curb at 5:07 p. m., the interval between that time and 7:45 p. m. was not sufficient to charge the city with constructive notice that the hose was not in the gutter, but two or three feet out in the street, where a traveler fell over it.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1647-1651; Dec. Dig. § 791.* 12 Va.-W. Va. Enc. Dig. 903, 905.]

6. Municipal Corporations (§ 819*)—Defects in Streets—Contributory Negligence—Evidence.—In an action against a city for injuries received by falling over a fire hose left in the street to flush a sewer, evidence held to show that plaintiff's own negligence was the proximate cause of her injury.

[Ed. Note.—For other cases, see *Municipal Corporations*, Dec. Dig. § 819.* 12 Va.-W. Va. Enc. Dig. 913.]

Error to Circuit Court of City of Portsmouth.

Action by Margaret Lee against the City of Portsmouth. Judgment for plaintiff, and defendant brings error. Reversed, and remanded for new trial.

Jno. W. Happer and Frank L. Crocker, for plaintiff in error.

S. Burrell Bragg and Jeffries, Wolcott, Wolcott & Lankford, for defendant in error.

CONSOLVO & CHESHIRE v. FERRIES CO.

June 8, 1911.

[71 So. Rep. 634.]

1. Ferries (§ 16*)—Leases—Construction.—The city of Portsmouth and the county of Norfolk were jointly entitled to the use of a certain ferry landing, though the county had legal title. This property had been leased for a long time, and previous lessees had extended the landing space by filling in a certain strip of land, and those lessees had used that land for over 20 years. Both the county and city leased the ferry and other joint property to the plaintiff's assignee, which lease included all of the ferry property belonging to both. On the same day the lease was made to plaintiff's assignee, the county leased the property filled in to defendant's assignee, which lease, after describing the property as part of the Norfolk county dock property, provided that, if the use of that property became necessary for the ferries, it should be released and given up. Held, that this land was part of the ferry property, and, as the de-

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